

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 13148US02)**

IN THE APPLICATION OF:

Arthur J. Carlson

SERIAL NO.: 09/882,100

FILED: June 15, 2001

FOR: METHOD OF INTELLIGENTLY
RESTRICTING SYMBOL SIZE IN
ADSL MODEMS

ART UNIT: 2611

EXAMINER: Temesghen Ghebretinsae

CONF. NO.: 7713

Filed electronically on February 7, 2011

REPLY BRIEF

MS: APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant submits this Reply Brief in response to the Examiner's Answer mailed on December 7, 2010.

REMARKS

Appellant stands by the arguments presented in the Appeal Brief filed on August 30, 2010 and submits that claims 1-22 are not obvious under 35 U.S.C. § 103(a) in view of the Applicant's admitted prior art and Hardy III (U.S. Patent 5,781,598). Appellant submits this Reply Brief to address some assertions made by the Examiner in the Examiner's Answer.

The Examiner contends that the Applicant's admitted prior art teaches "obtaining a data rate during initialization," per claim 1, at page 2, lines 4-9, which reads, "As an alternative, it has been proposed in forthcoming revisions to the current standards that the total number of bits, L, per symbol be allowed to be any integer (i.e. arbitrary), rather than simply a multiple of 8. While this proposed alternative addresses the excess data carrying capacity problem mentioned above, it introduces its own associated problems." This passage in no teaches "obtaining a data rate during initialization," per claim 1. The Examiner alleges that obtaining a data rate during initialization is somehow inherent in this passage. In the Examiner's Answer, the Examiner supports his position by saying, "More particularly, ADSL modems transmit at a rate of 4000 symbols per second."¹ Appellant submits that transmitting at a given data rate does not constitute "obtaining a data rate" as that phrase would be understood by one of skill in the art. Furthermore, the claims must be construed in the light of the specification, and in this case, the specification makes it clear that "obtaining a data rate" means receiving information stating what the data rate is. And this is clearly not taught by Applicant's admitted prior art.

But regardless of whether the phrase "obtaining a data rate" is deemed to be satisfied by the mere transmission of data at a data rate, claim 1 is patentable over the cited art because the Hardy III reference does not teach "forming symbols using a multiple of a predetermined number of bits per symbol if the data rate is above the threshold; and allowing symbols to be formed using any integer number of bits per symbol if the data rate is below the threshold," as alleged by the Examiner. The Examiner argues that this limitation(s) is taught by Hardy III's teaching of using either character mode or packet mode based on a data rate.² Appellant submits that it clearly is not. "Forming symbols using a multiple of a predetermined number of bits per symbol

¹ Examiner's Answer, page 3.

² Examiner's Answer, pages 4 and 7.

if the data rate is above the threshold” is in no way taught by transmitting symbols in packet mode if a data rate is above a threshold. And “allowing symbols to be formed using any integer number of bits per symbol if the data rate is below the threshold” is in no way taught by transmitting symbols in character mode if the data rate is below the threshold.

In view of the above, as well as the arguments presented in the Appeal Brief, Appellant submits that the Examiner has not set forth a prima facie case of obviousness. Appellant submits that claim 1, and claims 2-6 and 21 depending therefrom, are allowable over the cited art.

Claims 7 and 13 include limitations similar to those included in claim 1 and were rejected only via reference to the rejection of claim 1. Appellant submits that claims 7 and 13, and claims 8-12, 14-20, and 22 depending therefrom, are allowable over the cited art for the reasons set forth above with respect to claim 1.

Reversal of the Examiner’s rejection and issuance of a patent on the application are therefore requested.

Commissioner is hereby authorized to charge additional fee(s) or credit overpayment(s) to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: February 7, 2011

Respectfully submitted,

/John A. Wiberg/
John A. Wiberg
Reg. No. 44,401
Attorney for Appellant

McANDREWS, HELD & MALLOY, LTD.
500 W. Madison, Suite 3400
Chicago, IL 60661
Telephone: (312) 775-8000